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MARY M LEE, PC

P.07/21

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-MARY M. LEE, P.C. -

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### FACSIMILE TRANSMITTAL

Date: March 6, 2002

To: BOX DAC  
OFFICE OF PETITIONS  
United States Patent & Trademark Office

Fax No.: (703) 308-6916

From: Mary M. Lee

My File No.: 5300-001

Re: U.S. Patent Application Serial No. 09/610,196  
HAIR STYLING BRUSH WITH REVERSE AIR FLOW

*PTO received full transmission  
3-06-02 Confirmed odh*

**Pages Including Cover Sheet: 13**

#### Comments:

Please see attached.

\_\_\_\_\_ The original of this correspondence will follow.

  X   No original of this correspondence will follow.

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AUG 17 2005

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Tommy Leon Myatt

Serial No.: 09/610,196

Filed: July 5, 2000

For: HAIR STYLING BRUSH WITH  
REVERSE AIR FLOW

Group No. 3742

Examiner: Daniel Leon Robinson

Att'y Dkt. No. 5300-001

**BOX DAC**

Commissioner for Patents

Washington, D.C. 20231

ATTN: OFFICE OF PETITIONS

**PETITION TO WITHDRAW ABANDONMENT**

On February 26, 2002, a Notice of Abandonment was mailed in the above application. The reason for abandonment stated in the Notice was that Applicant filed no reply in response to the Office letter mailed August 2, 2001. Applicant will show that a fully responsive reply was submitted to the Office action. Alternately, Applicant will show that at least a bona fide attempt was made to respond. Accordingly, Applicant petitions the Office to withdraw the abandonment of this application as improper.

On August 2, 2001, an Office action was mailed in this case. The action was directed solely to a restriction requirement. This undersigned attorney received the action on

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**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8(a)**

I hereby certify that, on the date shown below, this correspondence is being sent by facsimile transmission to the Office of Petitions at facsimile number 703-308-6916.

Date: March 6, 2002

Signed: 

Mary M. Lee, Attorney for Applicant

August 6, 2001. A copy of the date-stamped cover sheet (Form PTO-90C) of the Office action is enclosed.

On August 20, 2001, at approximately 8:46 a.m. the undersigned telephoned the Examiner. During this brief telephonic interview, the undersigned advised the Examiner that Applicant would elect Group I (claims 1-7) without traverse. The Examiner accepted the oral election and indicated it would be reflected in the next Office action on the merits.

The enclosed copy of the Office action cover sheet shows the undersigned's notation of the telephonic interview made contemporaneously with the call. In addition, a copy of the undersigned's telephone bill (in relevant part) for August 2001 is enclosed. The charge for the call to telephone number 703-306-9043 – the Examiner's direct dial number – is highlighted. No further action was received by the undersigned until February 20, 2002.

On February 20, 2002, the Examiner extended the courtesy of contacting the undersigned by telephone to inquire as to whether abandonment of the case was intended. This was the undersigned's first knowledge that the oral election had not been accepted. However, by this date, it was too late to file a written response, even with the maximum extension of time. (The 6-month deadline from the mailing date of the Office action was February 2, 2002.) The Notice of Abandonment followed.

Applicant submits that the oral response in the telephonic interview of August 20, 2001, was a complete and acceptable response to the Office action. There is no absolute requirement that an applicant submit all responses to all Office actions in writing. Indeed, oral responses to restriction requirements are encouraged. See Section 812.01 of the Manual of Patent Examining Procedure ("MPEP"). Even when a restriction requirement is made in a

written Office action, an election may be made orally. As stated in the MPEP at Section 714.04 regarding telephonic interviews:

... It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, *unless the examiner indicates he or she will do so*. It is the examiner's responsibility to see that such a record is made. ... *Discussions regarding only procedural matters*, directed solely to restriction requirements for which interview recordation is otherwise provided for MPEP Section 812.01, or pointing out typographical errors in Office action or the like, *are excluded from the interview recordation procedures*. Where a complete record of the interview has been incorporated in an examiner's amendment, it will not be necessary for the examiner to complete an Interview Summary form. (emphasis supplied)

Even if the oral election by the undersigned were somehow defective, it was at least a bona fide attempt to respond. As provided in 37 C.F.R. 1.135 (c):

When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

In such cases, the examiner should have followed the procedures set out in Section 714.03 of the MPEP. For example, instead of simply accepting the oral election and failing to enter it and then abandoning the application, the Examiner could have "notified the applicant that the reply must be completed within the period for reply to avoid abandonment."

Based on the foregoing, Applicant requests that the abandonment be withdrawn and the oral election be entered. Alternately, Applicant requests that the abandonment be withdrawn, that the oral election be treated as bona fide but incomplete response under 37 C.F.R. § 1.135, that the time to respond be extended, and that the written restriction response submitted herewith be entered.

Finally, the undersigned acknowledges her own failure to follow up on the oral election. The undersigned's routine docketing procedures provide that, where an oral reply is made to an Office action, the deadline for the response is not cleared until entry of the response

is confirmed (usually in the next Office action) or a status inquiry is submitted prior to the expiration of the initial 6-month deadline. However, due to inadvertence, the response deadline in this case was erroneously cleared. Accordingly, in the event this Petition is denied in its entirety, Applicant alternately petitions to revive the application as unintentionally abandoned. A petition to revive (Form PTO/SB/64), a written response, and the requisite fee are submitted herewith.

Respectfully Submitted,



Mary M. Lee, Reg. No. 31,976

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